X O EXPLORATION, INC.

IBLA 77-223 Decided May 20, 1977

Appeal from decision of the New Mexico State Office, Bureau of Land Management, requesting additional rental payment prior to issuance of noncompetitive oil and gas lease NM 28578.

Affirmed.

1. Oil and Gas Leases: Applications: Generally ! ! Oil and Gas Leases: Noncompetitive Leases ! ! Oil and Gas Leases: Rentals ! ! Regulations: Applicability

Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date.

APPEARANCES: Max H. Ernest III, President, X O Exploration, Inc., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This is an appeal from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated February 22, 1977, requiring X O Exploration, Inc. (appellant) to pay additional advance rental for the first lease year on noncompetitive oil and gas lease NM 28578, so as to comply with 43 CFR 3103.3-2, effective February 1, 1977, 42 F.R. 1032, which sets the rental fee at $ 1 per acre.

On August 2, 1976, appellant filed an offer to lease for oil and gas, accompanied by payment of a $ 20 rental, as computed at the

rate of 50 cents per acre. On February 22, 1977, the BLM issued a decision requesting payment of additional advance rental in the amount of $ 20 in order to bring the advance rental to the total of $ 1 per acre pursuant to a change in regulations, 43 CFR 3103.3-2, for all noncompetitive oil and gas leases issued on or after February 1, 1977.

Appellant contends that its lease should be issued under the terms in effect prior to February 1, 1977, that is, that the advance rental should be at the 50!cent rather than the $ 1 rate. Appellant states that it filed its offer to lease assuming that it would not take 6 months for the lease to issue, that is, for the BLM to accept the offer to lease.

The precise issue raised in this appeal came first before this Board in Raymond N. Joeckel, 29 IBLA 170 (1977). The conclusion in that decision was affirmed in Milton J. Lebsack, 29 IBLA 316 (1977), in Raymond N. Joeckel, 30 IBLA 32 (1977), and in Doris N. Sterkel, 30 IBLA 39 (1977). Those decisions contain a thorough review of the law. They held that a lease granted after February 1, 1977, must be at the rate provided for in 43 CFR 3103.3-2, as amended effective February 1, 1977. It is enough to quote from a letter of the Secretary of the Interior, as cited in Lebsack:

> Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977, have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued. [1/]

[1] The increase in rental rate after acceptance of payment at the advertised rate is not a violation of contract law. The payment of advance rental in connection with a noncompetitive oil and gas lease offer, and the acceptance of such payment by the Bureau of Land Management, do not create a binding obligation on the Bureau to issue an oil and gas lease. Geral Beveridge, 14 IBLA 351, 81 I.D. 80 (1974). Imposition of the increase in rental from 50 cents per acre to $ 1 per acre as a condition to issuance of a noncompetitive oil and gas lease issued after February 1, 1977, is within the authority of the Secretary in the exercise of his general powers

1/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

over the public lands as a guardian of the people. Knight v. United States Land Assoc., 142 U.S. 161 (1891). Further, the filing of an oil and gas lease offer does not vest in the applicants any vested right protected by the Fifth Amendment which would preclude subjecting them to the operation of the amended regulation. See, e.g., Udall v. Tallman, 380 U.S. 1, 4 (1965); McDade v. Morton, 494 F.2d 1156 (D.C. Cir. 1974). Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after a specified date, such increased rate is applicable to all leases issued subsequent to that date, including leases issued pursuant to the simultaneous filing procedures, even though the lease offers were drawn with first priority prior to the specified date. Raymond N. Joeckel, supra.

For the reasons set forth in Joeckel, the appellants were properly required to pay the annual rent as required by 43 CFR 3103.3-2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge